IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 854 of 1997
WITH
CIVIL APPLICATION No. 3920 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JSWANTSINGH A GADHVI AND OTHERS
Versus
COMMANDANT, SRP FORCE, VADODARA AND ANOTHER

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1 - 3.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 26/07/2006

ORAL JUDGMENT

By filing this petition under Article 226 of the Constitution of India, the petitioners have prayed for quashing and setting aside Memos dated 23.120.1996 and 18.1.1997 and for a direction to the respondents to promote the persons who have passed the examination in 1997 only after first promoting constables in the seniority-cum-merit list circulated on 23.2.1995.

The petitioners, who were working as Armed Police Constables in the State Reserve Police Force, have passed the qualifying examination for promotion to the post of Second Grade Had Constable in the year 1984. Thereafter further such examinations were held in 1994 and a combined seniority-cum-merit list was prepared of those who were left unpromoted from the list of 1984 examination and those who passed the examination in the year 1994. The grievance of the petitioners is that those persons who have been found fit for promotion in the seniority-cum-merit list of 1984 are still awaiting promotion whereas the persons in the seniority-cum-merit list of 1994 are promoted whereby senior employees who have passed the examination later in point of time are promoted. The petitioners have, therefore, contended that they should be given seniority over those who have passed the examination

later on.

Mr. Supehia submitted that he has personal information that a similar issue is decided by this Court holding that there is nothing wrong if a senior employee who has passed the examination subsequently is promoted earlier than the person who has passed the examination earlier. However, Mr. Supehia is not in a position to point out either the citation or produce copy of the judgment. Though this Court appreciates the frankness of Mr. Supehia in pointing out that there is a decision against him, this Court cannot reject this petition solely on the basis of the statement of learned advocate.

In the affidavit in reply filed by Deputy S.P., SRP, Gr.I, Baroda, which is at page 39 of the compilation, it is pointed out that as per the Act and rules, the examination is a pre-requisite condition for promotion. In paragraphs 4 and 6, it is stated as under:

> “4. Before dealing with the contentions, deponent crave leave to submit the following facts:
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> A. That the pursuant to provisions of the Act and Rules examination are pre-requisite for promotion and at the time of consideration the constabulary should have passed the examination and on the basis of then seniority in the cadre or post the consideration is required to be made. It is submitted that neither there is any embargo and/or provisions of giving preferential treatment to any body on the basis of passing of examination earlier on account of

deputation or training and/or examination earlier or otherwise. The provisions does not provide for negative principle for loosing seniority for not passing the examination but provides that at the time of process, the persons should fulfill all the eligibility criterion including of passing the examination.

5. xxx xxx xxx xxx

6. With reference to para 7 to 10 and contentions thereof, it is submitted that the condition is examination (departmental) ought to have been passed at the time of screening mechanism and/or consideration for promotion is to be made and it is not requirement that the examination ought to have been passed in the specified chances and years otherwise the loosing of seniority as – 'Late Latif' in the case of examination rules of other department. It is submitted that norms are settled for eligibility by the authority for permission to appear in examination".

Mr. Gohil, learned Assistant Government Pleader submitted that passing of the departmental examination merely makes a person entitled to placed in the zone of consideration for promotion and since passing of the examination does not in any way alter the seniority list, a person who is senior in the list can be considered for promotion even if he has passed the examination subsequently.

The petitioners have failed to make out any case for giving them seniority over the persons who have passed the examination later on eventhough such persons are senior in service. Considering the aforesaid reply and submission of learned Assistant Government Pleader, in my view, it cannot be said that the authorities have committed any illegality in giving promotion to the senior employees who have passed the examination subsequently. Moreover, the petitioners have not even joined those employees who have been given benefit of promotion as parties in this petition, and in their absence, their promotions cannot be disturbed

Considering all these aspects, I do not find any substance in the petition. This petition is, therefore, required to be rejected, and is accordingly rejected. Rule is discharged. No order as to costs.

In view of the aforesaid order passed in the main petition, the Civil Application does not survive. The Civil Application stands rejected accordingly. Rule is discharged. No order as to costs.

[P. B. MAJMUDAR, J.]

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